

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-15-01784-PHX-PGR (ESW)

ORDER

James L. Kemp,
Plaintiff,
vs.
Joseph M. Arpaio, et al.,
Defendants. } No. CV-15-01784-PHX-PGR (ESW)
} ORDER

Pending before the Court is Magistrate Judge Willett's Report and Recommendation (Doc. 97), which concerns the plaintiff's Motion for Permission to Appeal in Forma Pauperis (Doc.93) and his Rule 9(a)(2) Motion to Stay Substitution of Arpaio with Paul Penzone (Doc. 88). Having reviewed the Report and Recommendation *de novo* in light of Plaintiff's Rule 72 Objections to Magistrate Judge Willett's Report and Recommendation that Court Deny Plaintiff's "Motion for Permission to Appeal in Forma Pauperis" (Doc. 106), the Court finds that the Report and Recommendation should be accepted in part and rejected in part as moot.

First, the Magistrate Judge's recommendation that the Court deny the plaintiff request to appeal *in forma pauperis* and revoke his *in forma pauperis* status on appeal has been mooted by the Ninth Circuit's subsequent issuance of its Mandate

1 (Doc. 110), wherein it dismissed the plaintiff's interlocutory appeal (Doc. 92) for lack
2 of jurisdiction.

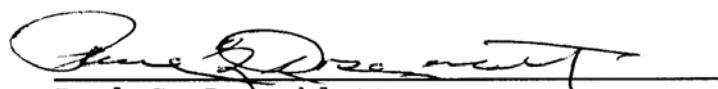
3 Second, the Court concludes that the Magistrate Judge properly determined
4 that the plaintiff's Rule 9(a)(2) Motion to Stay Substitution of Arpaio with Paul
5 Penzone be granted and that defendant Arapio should remain a defendant in this
6 action in his personal capacity. Therefore,

7 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
8 (Doc. 97) is accepted and adopted in part and is rejected in part as moot.

9 IT IS FURTHER ORDERED that the plaintiff's Motion for Permission to Appeal
10 in Forma Pauperis (Doc.93) is denied as moot.

11 IT IS FURTHER ORDERED that the plaintiff's Rule 9(a)(2) Motion to Stay
12 Substitution of Arpaio with Paul Penzone (Doc. 88) is granted and that Sheriff Paul
13 Penzone is substituted for defendant Arpaio only in his official capacity pursuant to
14 Fed.R.Civ.P. 25(d), and that defendant Arpaio shall remain a defendant in this action
15 in his personal capacity.

16 DATED this 30th day of May, 2017.

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19 Paul G. Rosenblatt
United States District Judge
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